

Maryland Judicial Ethics Committee

Opinion Request Number: 1980-01

Date of Issue: January 4, 1980

☒ Published Opinion ☐ Unpublished Opinion ☐ Unpublished Letter of Advice

Judge May Recommend Candidates for Judicial Appointments Whether Requested to Do So or Not

In your recent letter to this Committee, you state that you are retiring as of [date], and that several persons have sought your views on the relative merits of those who are interested in an appointment to the judicial office which you are vacating. You ask “whether, under the circumstances here, it would be improper for me to give my views to those who may be in a position to recommend appointments to the Governor.”

In [Opinion Request No. 1975-02 (unpublished)], this Committee dealt with the propriety of a judge writing a letter of recommendation to a Judicial Selection Commission on behalf of a candidate for appointment to a judgeship. The opinion first points out that “the writing of such a letter is not proscribed by either the Maryland Canons or Rules of Judicial Ethics.” The Committee, however, then “analogized” the making of such a recommendation to the active support of a candidate for election to judicial office, which had been deemed prohibited under Canon XXVII titled “Partisan Politics.” [Opinion Request No. 1975-02 (unpublished)] went on to quote Article 8 of the Maryland Declaration of Rights, relating to the separation of powers, and the opinion observed that the appointment of judges is an executive function. The Committee concluded in [Opinion Request No. 1975-02 (unpublished)] that a judge’s making a recommendation to a Judicial Selection Commission would be regarded as “inappropriate” unless the judge was first asked by a member of the Commission to express an opinion.

In our view, [Opinion Request No. 1975-02 (unpublished)] requires some clarification. Some of the language in the opinion might be construed as holding that a judge’s taking the initiative in recommending a candidate for judicial office is proscribed by Canon XXVII relating to partisan politics or by the separation of powers provision in the Declaration of Rights. To the extent that the language in [Opinion Request No. 1975-02 (unpublished)] may be subject to such construction, that language is hereby disapproved.

Certainly the appointment of a judge in Maryland today should not be regarded as a partisan political activity covered by Canon XXVII. In recent times, with the establishment and continued use of nonpartisan judicial selection commissions, there has been an effort in this State to make judicial appointments as “nonpolitical” as practicable. The movement has been toward what is often called a “merit” judicial selection system. The appointment of a judge simply cannot properly be “analogized” to the active political activity prohibited by Canon XXVII.

A judge’s making a recommendation concerning a candidate for appointment to a judgeship is also not prohibited by Article 8 of the Declaration of Rights. Article 8 provides that one who exercises the functions of one branch of government shall not “assume or discharge the duties of any other.” When an official in one branch of government makes a mere recommendation to an official or officials in another branch of government, he clearly is not assuming or discharging “the duties” of the latter branch. The assumption or discharge of duties ordinarily involves something more than